

C O P Y

548

in opinion

May 19, 1958

NEW HAMPSHIRE LAW LIBRARY

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CONCORD, N.H.

William A. Styles, Commissioner
N. H. State Liquor Commission
109 North Main Street
Concord, New Hampshire

Dear Mr. Styles:

In a letter of May 16, 1958, you inquired whether a city or other local government might by ordinance restrict the number of permits or licenses that might be held within its boundaries.

We answer in the negative.

The entire policy of our law concerning liquor and alcoholic beverages is found in Title XIII of the Revised Statutes Annotated. Except with respect to those matters dealt with in RSA 179 (Local Option), all matters relating to the sale of liquor and beverages have been reserved to the State acting through the Commission. Thus, the decision whether to issue a hotel license under RSA 178:3, a restaurant license under RSA 178:3-a (supp), or a special license under RSA 178:4 lies exclusively with the Commission. The language used is explicit. In each case it is provided: "[t]he commission may issue a license . . ."

The same concept is employed with respect to club licenses; but here State policy makes affirmative action on the part of the municipality under RSA 179 a condition to granting any such license. See RSA 178:7.

RSA 179 is again operative in connection with the issuance of off-sale and on-sale permits; but the statute last cited is the only provision whereby municipalities may affect the issuance of such permits. RSA 181:15 is particularly pertinent in demonstrating that the matter of the number of permits to be held within a given municipality was placed by the Legislature within the discretion of the Commission.

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Mr. William A. Styles

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This section lays down a number of standards which an applicant for a permit must meet and it provides, among other things, that the Commission, before granting a permit, must satisfy itself

"that the proposed location of the business is an appropriate one, taking into consideration its surroundings and the number of similar permits already issued in the neighborhood where the applicant's business is to be conducted."

The Legislature having dealt so fully with the subject, any town by-law or city ordinance attempting to regulate or restrict the granting of permits by the Commission must necessarily be "repugnant to the . . . laws of the state" (see, e.g., RSA 47:17:XV), and hence void.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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